



CAROL OWENS
WISCONSIN STATE REPRESENTATIVE



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144 County Road C
Oshkosh, Wisconsin 54904
(414) 589-4262

TO: Assembly Committee on Housing Members
FROM: Representative Carol Owens, Chairperson
DATE: September 8, 1998
RE: **CLEARINGHOUSE RULE 98-001**

As you may recall, last month we had the following Clearinghouse Rules referred to the Housing Committee:

Clearinghouse Rule 98-001, relating to residential rental practices.

Our deadline for committee action on this rule is today, **September 8, 1998**. Last Friday afternoon I received a proposed modification to the rule by the Department of Agriculture, Trade and Consumer Protection.

The modification is a result of contacts department staff received from legislators and members of the Wisconsin credit industry, who asked the department to consider revising the provisions in the rules regarding consumer credit checks. Specifically, the department was asked to modify the rule to better identify the types of consumer credit reports for which a landlord may charge a prospective tenant.

Since we have now received this modification, the deadline for committee action on this rule has been extended to **September 22, 1998** (ten working days).

If you have any questions, please feel free to contact me.

CO:jfz



State of Wisconsin
Tommy G. Thompson, Governor



Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: September 4, 1998

TO: Senator Gary Drzewiecki, Chairperson
Senate Committee on Business, Economic Development & Urban Affairs

Representative Carol Owens, Chairperson
Assembly Committee on Housing

FROM: Ben Brancel, Secretary *Ben Brancel*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Proposed Modification to Residential Rental Practices Rules**
Revising Ch. ATCP 134, Wis. Adm. Code (Clearinghouse Rule 98-0001)

The Department of Agriculture, Trade and Consumer Protection is submitting the attached modification to Clearinghouse Rule 98-0001, Final Draft Rules Revising Ch. ATCP 134, Wis. Adm. Code, for your review, pursuant to sec. 227.19(4)(b)3., Wis. Stats.

The attached modification is being presented as a result of contacts department staff received from legislators and members of the Wisconsin credit industry, who asked the department to consider revising the provisions in the rules regarding consumer credit checks. Specifically, the department was asked to modify the rule to better identify the types of consumer credit reports for which a landlord may charge a prospective tenant.

The attached modification was presented to the Department of Agriculture, Trade and Consumer Protection Board at its meeting on September 3, 1998. The Board approved the modification and approved the department submitting the modification to the reviewing committees.

If there are any questions about this modification, please contact Bill Oemichen, Administrator, Division of Trade and Consumer Protection at 224-4920.

Enclosure

cc: Bill Oemichen, Administrator, Division of Trade and Consumer Protection

SECTION 15. ATCP 134.05 is repealed and recreated to read:

ATCP 134.05 EARNEST MONEY DEPOSITS AND CREDIT CHECK FEES.

* * *

(4) CREDIT CHECK FEE. (a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, up to \$20, to obtain ~~from an accredited national credit reporting agency,~~ a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report, and shall provide the prospective tenant with a copy of the ~~credit~~ report.

(b) A landlord may not require a prospective tenant to pay for a consumer credit report under par. (a) if, before the landlord requests ~~that a consumer~~ credit report, the prospective tenant provides the landlord with a consumer credit report, from ~~an accredited national credit reporting agency~~ a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis that is less than 30 days old.

NOTE: Paragraph (b) does not prohibit a landlord from obtaining a more current consumer credit check at the landlord's expense.

SECTION 1m. ATCP 134.02(1m) is created to read:

ATCP 134.02(1m) "Consumer credit report" has the meaning given for "consumer report" in 15 USC 1681a(d).

SECTION 1r. ATCP 134.02(1r) is created to read:

ATCP 134.02(1r) "Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the meaning given in 15 USC 1681a(p), and includes the agency's contract affiliates.

Department of Agriculture, Trade
and Consumer Protection
Division of Trade & Consumer
Protection

Memorandum

TO: Steve Krieser
Office of Rep. Glenn Grothman
125 West, State Capitol

FROM: Bill Oemichen
Administrator, Division of Trade and Consumer Protection *Bill Oemichen*

DATE: August 27, 1998

SUBJECT: Chapter ATCP 134, Residential Rental Practices -- Revisions to Rules

Steve, attached is a draft letter for your consideration regarding the proposed changes to the credit check provisions of the Residential Rental Practices Rules. The credit check changes were made after Legal Counsel Teel Haas consulted with Bill Wilcox at the Credit Bureau of Madison. Teel and I think the proposed changes should resolve the concerns expressed by members of the credit industry.

I am not certain who should address the letter to the Department. Our chief legal counsel believes it should probably be sent from the policy committee chairs. What do you think?

Thanks for your help. Please call me at 224-4920 or Teel Haas at 224-5032 if you have any questions.

Enclosure

Draft 8-27-98

DATE: August __, 1998

TO: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

FROM: Senator Robert Welch
Co-Chair, Joint Committee for Review of Administrative Rules

and

Representative Glenn Grothman
Co-Chair, Joint Committee for Review of Administrative Rules

**SUBJECT: Residential Rental Practices: Final Draft Rules Revising Ch. ATCP 134,
Wis. Adm. Code (Clearinghouse Rule 98-0001)**

We have been reviewing the final draft rule, Ch. ATCP 134.

After consulting with members of the Wisconsin credit industry, we have determined that more specific language is needed in the credit check provisions. Specifically, we believe the final draft rule language should be modified to more fully identify the types of consumer credit reports the landlord may charge the prospective tenant for obtaining.

Proposed language changes are attached for your consideration.

Enclosure

SECTION 15. ATCP 134.05 is repealed and recreated to read:

ATCP 134.05 EARNEST MONEY DEPOSITS AND CREDIT CHECK FEES.

* * *

(4) CREDIT CHECK FEE. (a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, up to \$20, to obtain ~~from an accredited national credit reporting agency,~~ a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report, and shall provide the prospective tenant with a copy of the ~~credit~~ report.

(b) A landlord may not require a prospective tenant to pay for a consumer credit report under par. (a) if, before the landlord requests ~~that a consumer~~ consumer credit report, the prospective tenant provides the landlord with a consumer credit report, from ~~an accredited national credit reporting agency~~ a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis that is less than 30 days old.

NOTE: Paragraph (b) does not prohibit a landlord from obtaining a more current consumer credit check at the landlord's expense.

SECTION 1m. ATCP 134.02(1m) is created to read:

ATCP 134.02(1m) "Consumer credit report" has the meaning given for "consumer report" in 15 USC 1681a(d).

SECTION 1r. ATCP 134.02(1r) is created to read:

ATCP 134.02(1r) "Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the meaning given in 15 USC 1681a(p), and includes the agency's contract affiliates.

Section 601
Short Title

Definitions from Fair Credit
Reporting Act

15 USC 1681

This title may be cited as the "Consumer Credit Reporting Reform Act of 1996."

Section 603

§ 1681a, Definitions and Rules of Construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) Consumer Report:

(1) In general: The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for-- (A) credit; or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under Section 604.

(2) Exclusions: The term "consumer report" does not include--

(A) any--

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) any communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under Section 615; or

(D) a communication described in subsection (o).

(p) Consumer Reporting Agency That Compiles and Maintains Files on Consumers on a Nationwide Basis: The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

Zibrowski, Jacque

From: Matthias, Mary
Sent: Tuesday, August 11, 1998 1:20 PM
To: Zibrowski, Jacque
Subject: RE: CLEARINGHOUSE RULE

Hi Jacque- I checked the Clearinghouse report on that rule- looked ok.

Mary Matthias
Senior Staff Attorney
Legislative Council Staff
ph:(608)266-0932; FAX:(608)266-3830
mary.matthias@legis.state.wi.us

-----Original Message-----

From: Zibrowski, Jacque
Sent: Thursday, August 06, 1998 1:26 PM
To: Matthias, Mary
Subject: CLEARINGHOUSE RULE

Hello!

The following rule was referred to the Housing Committee today. At this point, we are not considering holding a hearing on it. I will let you know if other members of the committee want to schedule a hearing.

Jacque

<< File: Clearinghouse Rule 98-001.mem.doc >>



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TO: Assembly Committee on Housing Members
FROM: Representative Carol Owens, Chairperson
DATE: August 6, 1998
RE: **CLEARINGHOUSE RULES**

Today, the following rule was referred to the Assembly Committee on Housing:

Clearinghouse Rule 98-001, relating to residential rental practices.

Please contact Jacque in my office (267-7990) if you would like a copy of the rule. The deadline for committee action on this rule is **September 8, 1998**. If you are interested in requesting a hearing or submitting comments on the rule, please do so prior to the deadline date.

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
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(608) 266-2982

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Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-001

AN ORDER to repeal ATCP 134.02 (4); to renumber ATCP 134.03 (2); to amend ATCP 134.01 (title), (intro.) and (1) to (6), 134.02 (10), 134.03 (title) and (2) (title), 134.04 (1) (b) and (2) (b) 1. and 2. and 134.08 (7); to repeal and recreate ATCP 134.05, 134.06 (1) to (3) and 134.09 (2) and (4); and to create ATCP 134.02 (9m), (10) Note and (14), 134.03 (2) (b), 134.04 (2) (b) 3. and 4., 134.05 Note, 134.06 Note and 134.09 (4) Note and (7) to (9), relating to residential rental practices.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

01-05-98 RECEIVED BY LEGISLATIVE COUNCIL.

01-20-98 REPORT SENT TO AGENCY.

RS:RW;jt;lah

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-001

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The agency may wish to define the terms "student dwelling" in s. ATCP 134.01 (4) and "commercial agricultural operations" in s. ATCP 134.01 (6), since these terms are included in exceptions to the rule and may be central to possible arguments regarding application of the rule.

b. The agency may wish to include a definition or cross-reference to the term "days" in the rule as a contrast to the term "business days" as used in the rule.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULE TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 98-001 to the presiding officer of each house of the legislature for standing committee review. The proposed rule repeals ATCP 134.02(4); renumbers ATCP 134.03(2); amends ATCP 134.01(title), (intro) and (1) to (6), 134.02(10), 134.03(title), 134.03(2)(title), 134.04(1)(b), 134.04(2)(b)1. and 2., and 134.08(7); repeals and recreates ATCP 134.05, 134.06(1) to (3), and 134.09(2) and (4); and creates ATCP 134.02(9m), (10)(note) and (14), 134.03(2)(b), 134.04(2)(b)3. and 4., 134.05(note), 134.06(note), 134.09(4)(note) and 134.09(7) to (9); relating to residential rental practices.

Dated this 28 day of July, 1998.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary



State of Wisconsin
Tommy G. Thompson, Governor



Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: July 29, 1998

TO: The Honorable Brian Rude
President, Wisconsin State Senate
Room 102, 119 Martin Luther King Jr. Blvd
Madison, WI 53707-7882

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, WI 53708

FROM: Ben Brancel, Secretary *Ben Brancel*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Residential Rental Practices: Final Draft Rules Revising ch. ATCP 136, Wis. Adm. Code; (Clearinghouse Rule 98-001)

Pursuant to ss. 227.19(2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection hereby transmits the above rule for legislative committee review. We are enclosing three copies of the final draft rule, together with the following report. Pursuant to s. 227.19(2), Stats., the Department will publish a notice of this referral in the Wisconsin Administrative Register.

1. EXPLANATION OF NEED FOR RULE

Approximately one-third of all Wisconsin households, or more than 1.5 million people, live in rental housing. Thousands of new rental transactions occur every year, and landlord-tenant disputes continue as a major source of consumer complaints.

In 1978, at the request of the Legislature, the Department of Agriculture, Trade and Consumer Protection conducted a major study of landlord-tenant problems. In 1980, the department adopted rules to address unfair rental practices identified in that study. Unchanged since its original adoption, the current landlord-tenant rule regulates various residential rental practices under the department's authority to regulate and prohibit unfair trade practices. Issues addressed in the code include required disclosures to tenants, rental agreement standards, use and return of security and "earnest money" deposits, repair promises, and the establishment of certain prohibited practices such as

rental of condemned premises, unauthorized entry, seizure of personal property and retaliatory eviction.

Current Rules Reviewed

In 1996, the department was petitioned by a group of legislators to initiate an orderly review of the current residential rental practices regulations under ch. ATCP 134, Wis. Adm. Code. The purpose of the review was to identify changes that would clarify rule provisions, improve compliance and reduce confusion that put landlords at legal risk in small claims actions.

In response to this legislative request, the department convened an Ad Hoc Advisory Committee on Residential Rental Practices. The advisory committee included representatives of landlords, property managers and tenants. The advisory committee met seven times to review the current landlord-tenant rules, identify problems and discuss proposals for change. The committee recommended a number of changes to the current rules while still balancing the legitimate interests of residential property owners and tenants.

The department prepared this rule based on the advisory committee recommendations with only minor modifications. For example:

- The committee recommended that a standard rental disclosure form be included in the rule. The department has not included a standard disclosure form in the rule itself, partly because of concerns about a "one size fits all" form, and also because of the difficulty of changing a form once it is adopted by rule. However, the department agrees that a sample disclosure form would be useful, and has developed a sample form based on committee recommendations. The department intends to distribute the sample rental disclosure form in informational materials provided to landlords and tenants. The rental industry will also retain the flexibility to develop alternative forms that achieve the same purpose.
- The committee asked the department to codify, by rule, the formula for computing damages which a tenant may recover if a landlord fails to return or properly account for a tenant security deposit. The department believes that the determination of damages is best left to the courts. However, the department has included a note referring to a recent Wisconsin Court of Appeals case which discussed the appropriate measure of tenant damages.

Changes to Current Rules

This rule modifies current rules under ch. ATCP 134, Wis. Adm. Code. Among other things, this rule:

- Clarifies the coverage of current rules.
- Clarifies the definition of “rental agreement.” Consistent with common law, a “rental agreement” (conveying a tenancy interest in real estate) does not arise until the parties agree on the essential terms of tenancy, including the specific dwelling unit and the amount of rent to be paid for that dwelling unit.
- Clarifies the use of rental applications, and allows landlords and tenants to agree that they will enter into a rental agreement in the future, assuming the satisfactory negotiation of specific terms and conditions, before a specific dwelling unit is identified, but prohibits deceptive “bait and switch” tactics by landlords.
- Clarifies current rules related to the acceptance, return and withholding of “earnest money” deposits paid by prospective tenants.
- Modifies current rules related to the documentation of pre-existing damages.
- Clarifies current requirements related to the disclosure of conditions affecting the habitability of the dwelling unit.
- Deletes reference to “form provisions” in the current rule, and clarifies procedures for separately negotiating written, nonstandard rental provisions which (1) expand a landlord’s normal right of entry to a tenant’s dwelling unit, (2) expand the normal reasons for which a landlord may withhold a tenant’s security deposit, and (3) give the landlord a lien on the tenant’s personal property. Creates a rebuttable presumption that nonstandard rental provisions have been separately negotiated if signed or initiated by the tenant.
- Requires landlords to give tenants receipts for cash rent payments.
- Prohibits rental provisions which purport to waive the landlord’s legal obligation to provide fit and habitable premises.
- Clarifies current rules related to a landlord’s entry into a tenant’s dwelling unit.
- Regulates, but does not prohibit, penalties for late rent payments.
- Clarifies the term “surrender of premises” and the deadline by which a landlord must return or account for a tenant’s security deposit, clarifies procedures for returning security deposits, and confirms that a tenant does not waive a right to the full amount of security deposit owed by the landlord merely by accepting a partial payment.
- Prohibits forcible “self-help” evictions, and requires evictions to follow procedures specified under ch. 799, Stats.

Summary of Public Hearing Testimony

The Board of Agriculture, Trade and Consumer Protection authorized public hearings on draft revisions to ch. ATCP 134, Wis. Adm. Code, on November 11, 1997.

Public hearings were held on January 21, 1998 in Milwaukee, January 23 in Green Bay, January 28 in Wausau, January 29 in Eau Claire and January 30 in Madison. A total of 111 people registered in attendance at the hearings; 54 registered in support of the proposed amendments, 38 registered neither for nor against the proposed amendments and 19 registered in opposition to the proposed amendments.

The hearing record remained open until February 13, 1998. A total of 92 people submitted written comments; 69 submitted comments in support of the proposed amendments, 21 people submitted comments neither for nor against the proposed amendments, and 2 persons submitted comments opposing the proposed amendments.

Appendix A contains a detailed list of persons testifying, registering or submitting written comments on the proposed revisions to ch. ATCP 134.

Changes from Hearing Draft

In response to hearing testimony and written comments, the department changed the proposed rule in the areas listed below. The department also made nonsubstantive changes, including changes suggested by the Legislative Council Rules Clearinghouse.

- The final rule was modified to allow landlords to charge the actual cost of obtaining a credit report on a prospective tenant from a national credit reporting agency, but not to exceed \$20. In these instances, a landlord must notify the prospective tenant of the charge before requesting the credit report, and must give a copy of the report to the prospective tenant. The charge to the tenant must also be separate from any earnest money deposit required by the landlord. The rule change also allows the prospective tenant to reuse this credit report in subsequent rental searches within a 30-day period without being charged again for an updated credit report. This change is intended to help reduce the costs associated with screening tenants who falsify applications.
- The draft rule was modified to allow up to 21 calendar days for landlords to complete application processing before requiring return of earnest money deposits. The purpose of this change is to reduce the costs of processing rental applications and provide small business owners with the requisite time to adequately screen tenants.
- The draft rule was modified to allow multiple non-standard rental provisions to be contained within a single document and that document may be pre-printed. This change is intended to reduce paperwork and printing costs.

- The draft rule was modified to allow tenants to designate, in writing, the specific parties to whom the security deposit shall be paid. The purpose of this change is to reduce confusion regarding which party in a rental agreement is due the return of a security deposit, and reduce liability to business owners.

Effective Date

This rule has a proposed effective date of January 1, 1999. The rule will apply to rental agreements entered into after that effective date. It will also apply to continuing periodic tenancies (e.g., month-to-month tenancies) beginning with the first full rent-paying period beginning after the effective date of the rule.

Fiscal Estimate

This rule is not expected to have a significant fiscal effect on the department or local units of government. Staff will be required to provide necessary public information and education, including the revision and printing of the booklet, "*Landlord and Tenant, The Wisconsin Way*" and several small brochures, which will be accomplished as a part of normal department operations. A final fiscal estimate is attached as Appendix B.

Final Regulatory Flexibility Analysis

A copy of the final regulatory flexibility analysis is attached as Appendix C.

PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES

The state of Wisconsin department of agriculture, trade and
consumer protection proposes the following order to repeal ATCP
134.02(4); to renumber ATCP 134.03(2); to amend ATCP
134.01(title), (intro.) and (1) to (6), 134.02(3) and (10),
134.03(title), 134.03(2)(title), 134.04(1)(b), 134.04(2)(b)1. and
2., and 134.08(7); to repeal and recreate ATCP 134.05, 134.06(1)
to (3), and 134.09(2) and (4); and to create ATCP
134.02(10)(note) and (14), 134.03(2)(b), 134.04(2)(b)5. and 6.,
134.04(note), 134.06(note), 134.09(4)(note) and 134.09(7) to (9);
relating to residential rental practices.

Analysis by the Department of
Agriculture, Trade and Consumer Protection

Statutory authority: s. 100.20(2), Stats.

Statutes interpreted: s. 100.20, Stats.

The department of agriculture, trade and consumer protection
currently administers landlord-tenant rules under ch. ATCP 134,
Wis. Adm. Code. The current rules regulate residential rental
practices by landlords. This rule amends and clarifies the
current rules.

RULE COVERAGE

1
2
3 This rule clarifies the coverage of the current rules. The
4 current rules apply to the rental of residential dwelling units
5 in this state, except that the following dwelling units are
6 exempt:

- 7
- 8 • A dwelling unit operated by a public or private institution if
9 occupancy is incidental to detention or the provision of
10 medical, geriatric, educational, counseling, religious or
11 similar services. (This rule redrafts, but does not change,
12 the current exemption.)
 - 13
14 • A dwelling unit operated by a fraternal or social organization
15 for the benefit of its members. (This rule clarifies that the
16 exemption applies only to dwelling units occupied by members
17 of the organization.)
 - 18
19 • A dwelling unit occupied, under a contract of sale, by the
20 purchaser of the dwelling unit or the purchaser's successor in
21 interest. (This rule redrafts, but does not change, the
22 current exemption.)
 - 23
24 • A dwelling unit, such as a dwelling unit in a hotel, motel,
25 boarding house or lodging house, that is being rented only by
26 tourist or transient occupants. (This rule clarifies what is
27 meant by "tourist or transient occupants.")
 - 28
29 • A dwelling unit which the landlord provides free of charge.
30 (This rule clarifies that the exemption applies to a dwelling
31 unit which the landlord provides as compensation to an
32 employee operating or maintaining the premises, or which the
33 landlord provides free of charge to any person.)
 - 34
35 • A dwelling unit located on premises used primarily for
36 agricultural purposes. (This rule clarifies that the
37 exemption applies to a dwelling unit occupied by a tenant
38 engaged in commercial agricultural operations on the
39 premises.)
- 40

PRE-RENTAL DISCLOSURES AND PRACTICES

Rental Agreement

Under current rules, a "rental agreement" means any oral or written agreement for the rental of a dwelling unit. This rule clarifies that a "rental agreement" means an oral or written agreement, for the rental of a specific dwelling unit, in which the landlord and tenant agree on essential terms of tenancy such as rent.

If the landlord and tenant have not yet agreed on the dwelling unit or essential terms of tenancy, the mere approval of a tenant's rental application does not create a "rental agreement" under this rule. This rule confirms the common law principle that an enforceable "rental agreement" conveying a tenancy interest in real estate does not arise until the parties agree on essential terms of tenancy, including the specific dwelling unit to be rented and the amount of rent to be paid.

A "rental agreement" creates the relationship of landlord and tenant, from which certain rights and responsibilities flow. Under current rules, a "rental agreement" need not be made in writing. But under current rules, a landlord must make certain disclosures to a prospective tenant before entering into a "rental agreement." Current rules also regulate pre-rental practices by landlords, such as the receipt and disposition of earnest money deposits.

Misrepresentations to Prospective Tenants

This rule prohibits misrepresentations by landlords. Under this rule:

- No landlord may, for the purpose of inducing any person to enter into a rental agreement:
 - * Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.

- 1
- 2 * Misrepresent the amount of rent to be paid by the
- 3 tenant.
- 4
- 5 * Fail to disclose, in connection with any
- 6 representation of rent amount, the existence of
- 7 any non-rent charges which will increase the total
- 8 amount payable by the tenant during tenancy.
- 9
- 10 • No landlord may engage in "bait and switch" practices by
- 11 misrepresenting to any person, as part of a plan or scheme to
- 12 rent a dwelling unit to that person, that the person is being
- 13 considered as a prospective tenant for a different dwelling
- 14 unit.

15

16 **Credit Check Fee**

17

18 Under this rule, a landlord may require a prospective tenant to

19 pay the landlord's actual cost, up to \$20, to obtain from an

20 accredited national credit reporting agency a credit report on

21 the prospective tenant. The landlord must notify the prospective

22 tenant of the charge before requesting the credit report, and

23 must provide the prospective tenant with a copy of the credit

24 report.

25

26 A landlord may not require a prospective tenant to pay for a

27 credit report if the prospective tenant provides the landlord

28 with a credit report, from an accredited national credit

29 reporting agency, that is less than 30 days old. This does not

30 prohibit the landlord from obtaining a more current credit report

31 at the landlord's expense.

32

33 **Earnest Money Deposits; Acceptance**

34

35 Under current rules, an "earnest money deposit" means a deposit

36 which a rental applicant gives a landlord in return for the

37 option of entering into a rental agreement in the future, or in

38 return for having a rental application considered by the

39 landlord. A credit check fee authorized by this rule (see above)

40 is not considered an "earnest money deposit."

1
2 Under current rules, before a landlord accepts any "earnest money
3 deposit" from a prospective tenant, the landlord must make
4 certain disclosures related to dwelling unit habitability and
5 utility charges (see below). This rule clarifies that a landlord
6 may not accept an "earnest money deposit" from a prospective
7 tenant until the landlord identifies the dwelling unit(s) for
8 which the tenant is being considered, and complies with
9 applicable disclosure requirements for each identified dwelling
10 unit.

11 12 Earnest Money Deposits; Withholding

13
14 Under this rule, a landlord may withhold from a properly accepted
15 earnest money deposit if the prospective tenant fails to enter
16 into a rental agreement after being approved for tenancy, unless
17 the landlord has significantly altered the rental terms
18 previously disclosed to the tenant. Under this rule, as under
19 the current rule, the landlord may withhold for actual costs and
20 damages incurred because of the tenant's failure to enter into a
21 rental agreement. The landlord may not withhold for lost rents
22 unless the landlord has made a reasonable effort to mitigate
23 those losses, as provided under s. 704.29, Stats.

24
25 This rule creates a note referring to the Wisconsin court of
26 appeals decision in Pierce v. Norwick, 202 Wis. 2d 588 (1996),
27 regarding the award of damage claims for improper withholding of
28 security deposits. The same principles may be applicable to
29 earnest money deposits.

30 31 Earnest Money Deposits; Return

32
33 This rule modifies current rules, which require a landlord to
34 refund an applicant's earnest money deposit if the landlord
35 rejects his or her rental application. Under this rule, a
36 landlord must refund an applicant's earnest money deposit by the
37 end of the next business day after any of the following occurs:

- 38
39 • The landlord rejects the rental application.

- 1 • The applicant withdraws the rental application before the
2 landlord approves it.
3
- 4 • The landlord fails to approve the rental application by the
5 end of the third business day after the landlord accepts the
6 earnest money deposit, or by the end of a later date to which
7 the parties agree in writing. The later date may not be more
8 than 21 calendar days after the landlord accepts the earnest
9 money deposit.

10 Although this rule clarifies the definition of "rental agreement"
11 (see above), it does not change current rules which require a
12 landlord to do one of the following upon entering into a "rental
13 agreement" with a tenant:
14

- 15
- 16 • Apply the tenant's earnest money deposit, if any, as rent.
 - 17
 - 18 • Hold the tenant's earnest money deposit, if any, as a security
19 deposit to secure the tenant's obligations under the rental
20 agreement.
 - 21
 - 22 • Return the tenant's earnest money deposit, if any, to the
23 tenant.
 - 24

25 This rule clarifies that, merely by accepting a partial refund of
26 an earnest money deposit, a tenant does not automatically waive
27 any claim which he or she may have to a larger refund.
28

29 Security Deposits

30 Under current rules, a "security deposit" means the total of all
31 payments and deposits given by a tenant to a landlord as security
32 for the performance of the tenant's obligations under the rental
33 agreement, and includes all rent payments in excess of one
34 month's prepaid rent.
35

36 This rule clarifies, by note, that nothing prohibits a landlord
37 from collecting more than one month's prepaid rent. However, if
38 the landlord holds any rent prepayment in excess of one month's
39 prepaid rent when the tenant surrenders the premises, the
40

1 landlord must treat that excess as a "security deposit." (See
2 below.)

3
4 **Check-In Procedures; Pre-Existing Damages**

5
6 Under current rules, a landlord must do all of the following
7 before accepting a security deposit from a tenant:

- 8
9 • Inform the tenant that the tenant has 7 days after the start
10 of tenancy to inspect the dwelling unit and notify the
11 landlord of any pre-existing damages or defects.
12
13 • Give the tenant a list of damages charged to the previous
14 tenant's security deposit.

15
16 This rule modifies the current rules. Under this rule, before a
17 landlord accepts a security deposit or converts an earnest money
18 deposit to a security deposit, the landlord must notify the
19 tenant in writing that the tenant may do any of the following by
20 a specified deadline date which is not less than 7 days after the
21 start of tenancy:

- 22
23 • Inspect the dwelling unit and notify the landlord of any
24 preexisting damages or defects.
25
26 • Request a list of physical damages or defects, if any, charged
27 to the previous tenant's security deposit. The landlord may
28 require the tenant to make this request, if any, in writing.

29
30 Under this rule, if a tenant requests a list of damages charged
31 to the previous tenant's security deposit, the landlord must
32 provide that list within 30 days, or within 7 days after the
33 landlord notifies the previous tenant of the security deposit
34 deductions, whichever occurs later. The landlord may explain
35 that some or all of the listed damages or defects have been
36 repaired, if that is the case. The landlord need not disclose
37 the previous tenant's identity, or the amounts withheld from the
38 previous tenant's security deposit.

1 Landlord Identification

2
3 Under current rules, a landlord (other than the resident owner of
4 a structure containing 4 or fewer dwelling units) must disclose
5 both of the following at or before the time that the landlord and
6 tenant enter into a rental agreement:

- 7
8 • The name and address of the person responsible for managing
9 and maintaining the dwelling unit.
10
11 • The name and address of the property owner, or a person
12 authorized to accept service of legal process on behalf of the
13 property owner.
14

15 Under current rules, the landlord must give the tenant an updated
16 disclosure whenever this information changes. This rule
17 clarifies that the landlord must mail or deliver the updated
18 disclosure to the tenant within 10 days after the change occurs.
19

20 Dwelling Unit Condition and Utility Charges; Disclosures

21 This rule clarifies current rental disclosure requirements.
22 Under current rules, a landlord must disclose the following
23 conditions, if they exist, before entering into a rental
24 agreement or accepting any earnest money deposit or security
25 deposit from the prospective tenant:
26

- 27
28 • Uncorrected housing code violations affecting the dwelling
29 unit. (This rule makes no change.)
30
31 • That the dwelling unit lacks hot and cold running water.
32 (This rule clarifies to say hot or cold running water.)
33
34 • That the dwelling unit lacks plumbing facilities in good
35 operating condition. (This rule clarifies, but makes no
36 substantive change.)
37
38 • That the dwelling unit lacks sewage disposal facilities in
39 good operating condition. (This rule clarifies, but makes no
40 substantive change.)

- That heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature of 67° F (19° C) during all seasons of the year in which the dwelling unit may be occupied. (This rule clarifies that, for purposes of this disclosure, temperatures in living areas are measured at the center of the room, midway between floor and ceiling.)
- That the dwelling unit is not served by electricity, or the electrical system is not in safe operating condition. (This rule makes no change.)
- Any structural or other conditions in the dwelling unit which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises, other than negligent use or abuse. (This rule makes no change.)
- Whether heat, water and electricity are included in the rent or billed separately. If dwelling units are not separately metered, the landlord must also disclose the basis on which utility charges will be allocated. (This rule makes no change.)

Nonstandard Rental Provisions

Current rules identify certain rental provisions which, because of their potential unfairness to tenants, may not be incorporated as boilerplate "form provisions" in a rental agreement. These provisions, if used at all, must be separately negotiated between the landlord and tenant.

This rule clarifies the procedure by which these provisions must be separately negotiated. Under this rule, the following provisions may not be included in any rental agreement unless they are included in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS:"

- 1 • Any agreement expanding the landlord's normal rights of entry
2 to the tenant's dwelling unit (see below).
3
4 • Any agreement expanding the normal reasons for which a
5 landlord may withhold from the tenant's security deposit (see
6 below).
7
8 • Any lien agreement giving the landlord a lien on the tenant's
9 personal property to secure performance of the tenant's
10 obligations under the rental agreement (see below).

11
12 The landlord must discuss each "nonstandard rental provision," if
13 any, with the prospective tenant. If a tenant signs or initials
14 a "nonstandard rental provision," it is presumed that the
15 landlord has discussed that individual provision with the tenant
16 and that the tenant agreed to it.

17 PRACTICES DURING TENANCY

18 19 Receipts for Cash Rent Payments

20
21 Under current rules, a landlord must give a tenant an immediate
22 receipt for any cash deposit, such as an earnest money or
23 security deposit, paid by the tenant. Under this rule, a
24 landlord must also give a tenant a receipt for any rent payment
25 which a tenant pays in cash. The receipt must state the nature
26 and amount of the payment. The landlord need not give a receipt
27 for a rent payment made by check.
28

29 Fit and Habitable Premises

30
31 Under current rules, a landlord may not use a boilerplate "form
32 provision" in a rental agreement to secure the tenant's waiver of
33 any statutory or other legal obligation which the landlord may
34 have to provide fit and habitable premises, or to maintain the
35 premises during tenancy. This rule strengthens the current
36 provision, by prohibiting any rental provision which purports to
37 waive those legal obligations.
38
39

1 Unauthorized Entry

2
3 With certain exceptions, current rules limit the reasons for
4 which a landlord may enter a tenant's dwelling unit. The current
5 rules also require prior notice of entry (normally 12 hours prior
6 notice), and prohibit entry except at reasonable times.
7

8 This rule clarifies the current rules. With certain exceptions,
9 this rule prohibits a landlord from doing any of the following:
10

- 11 • Entering a dwelling unit during tenancy except to inspect the
12 premises, make repairs, or show the premises to prospective
13 tenants or purchasers, as authorized under s. 704.05(2),
14 Stats. A landlord may enter for the amount of time reasonably
15 required to inspect the premises, make repairs, or show the
16 premises to prospective tenants or purchasers.
17
- 18 • Entering a dwelling unit during tenancy except upon advance
19 notice and at reasonable times. Advance notice means at least
20 12 hours advance notice unless the tenant, upon being notified
21 of the proposed entry, consents to a shorter time period.
22

23 These entry restrictions do not apply if any of the following
24 applies:
25

- 26 • The tenant, knowing the proposed time of entry, requests or
27 consents in advance to the entry.
28
- 29 • A health or safety emergency exists.
30
- 31 • The tenant is absent and the landlord reasonably believes that
32 entry is necessary to protect the premises from damage.
33

34 Under current rules, a tenant may agree to a nonstandard rental
35 provision (other than a boilerplate "form provision") which
36 authorizes the landlord to enter a tenant's dwelling unit under
37 circumstances not authorized above. This rule clarifies that:
38

- 1 • The nonstandard provision, if any, must be contained in a
2 separate written document entitled "NONSTANDARD RENTAL
3 PROVISIONS" (see above).
- 4 • The landlord must specifically identify and discuss the
5 nonstandard provision with the tenant, and provide a copy to
6 the tenant.
- 7 • If the tenant signs or initials the nonstandard provision, it
8 is presumed that the landlord has specifically identified and
9 discussed it with the tenant, and that the tenant has agreed
10 to it.

11 Under this rule, no landlord may enter a tenant's dwelling unit
12 during tenancy without first announcing the entry to persons who
13 may be present in the dwelling unit (such as by knocking or
14 ringing the doorbell). The landlord must also identify himself
15 or herself upon request.

16 **Late Rent Fees and Penalties**

17 This rule prohibits a landlord from charging a late rent fee or
18 late rent penalty, except as specifically provided in a written
19 rental agreement. Before charging a late rent fee or late rent
20 penalty, the landlord must apply all rent prepayments received
21 from the tenant to offset the amount of rent owed by the tenant.
22 A landlord may not charge a tenant a fee or penalty for
23 nonpayment of a late rent fee or late rent penalty.

24 **RETURNING SECURITY DEPOSITS**

25 **Deadline for Returning Security Deposit**

26 Under current rules, a landlord must return or account for a
27 tenant's security deposit within 21 days after the tenant
28 "surrenders" the premises to the landlord. This rule clarifies
29 that a tenant is deemed to "surrender" the premises on the last
30 day of tenancy specified under the rental agreement, except that:

- 1 • If the tenant gives the landlord a written notice that the
2 tenant has vacated before the last day of tenancy specified in
3 the rental agreement, "surrender" occurs when the landlord
4 receives the written notice that the tenant has vacated.
5
6 • If the tenant vacates the premises after the last day of
7 tenancy specified in the rental agreement, "surrender" occurs
8 when the landlord learns that the tenant has vacated.
9
0 • If the tenant is evicted, "surrender" occurs when a writ of
1 restitution is executed, or the landlord learns that the
2 tenant has vacated, whichever occurs first.
3

4 Security Deposit Return or Accounting

5
6 Under current rules, a landlord must return the full amount of a
7 tenant's security deposit within 21 days after a tenant
8 "surrenders" the rental premises, less any amounts properly
9 withheld by the landlord (see below). The landlord must provide
10 the tenant with a written statement accounting for all amounts
11 withheld.
12

13 Under current rules, the landlord must return the security
14 deposit in person, or by mail to the tenant's last known address.
15 If the tenant surrenders the premises without leaving a
16 forwarding address, the landlord may mail the security deposit to
17 the tenant's last known address.
18

19 Under this rule, if a landlord returns a security deposit in the
20 form of a check, draft or money order, the landlord must make the
21 check, draft or money order payable to all tenants who are
22 parties to the rental agreement, unless otherwise authorized by
23 the tenants in writing.
24

25 Reasons for Withholding Security Deposit

26
27 Under current rules, a landlord may withhold a tenant's security
28 deposit only for the following purposes:
29

- 30 • Tenant damage, waste or neglect of the premises.
31
32
33
34
35
36
37
38
39
40

- 1
- 2 • Unpaid rent for which the tenant is legally responsible,
3 subject to the landlord's duty to mitigate under s. 704.29,
4 Stats.
- 5
- 6 • Payment which the tenant owes under the rental agreement for
7 utility service provided by the landlord but not included in
8 the rent.
- 9
- 10 • Payment for direct utility service provided by a government-
11 owned utility, to the extent that the landlord becomes liable
12 for the tenant's nonpayment.
- 13
- 14 • Unpaid mobile home parking which a local unit of government
15 has charged to the tenant under s. 66.058(3), Stats., to the
16 extent that the landlord becomes liable for the tenant's
17 nonpayment.
- 18
- 19 • Other reasons specified in a rental provision which is
20 separately negotiated between the landlord and tenant (not
21 just a boilerplate "form provision").

22 This rule clarifies that any rental provision expanding a
23 landlord's authority to withhold a security deposit must be
24 negotiated in the following manner:
25

- 26
- 27 • The nonstandard provision, if any, must be contained in a
28 separate written document entitled "NONSTANDARD RENTAL
29 PROVISIONS" (see above).
- 30
- 31 • The landlord must specifically identify and discuss the
32 nonstandard provision with the tenant, and provide a copy to
33 the tenant.
- 34
- 35 • If the tenant signs or initials the nonstandard provision, it
36 is presumed that the landlord has specifically identified and
37 discussed it with the tenant, and that the tenant has agreed
38 to it.
- 39

1 Neither this rule nor the current rules authorize a landlord to
2 withhold a security deposit for normal wear and tear, or for
3 other damages or losses for which the tenant cannot reasonably be
4 held responsible under applicable law.

5
6 **Failure to Return or Properly Account for Security Deposit**
7

8 This rule clarifies that, merely by accepting a partial refund of
9 an earnest money deposit, a tenant does not automatically waive
10 any claim which he or she may have to a larger refund.

11
12 This rule creates a note referring to the appellate court
13 decision in Pierce v. Norwick, 202 Wis. 2d 588 (1996), regarding
14 the award of damage claims for failure to comply with rules
15 related to security deposits.

16
17 **EVICTION AND RELATED ISSUES**
18

19 **Confiscating Personal Property**
20

21 Under current rules, a landlord may not confiscate a tenant's
22 personal property, or prevent a tenant from taking possession of
23 the tenant's personal property, except as authorized by s.
24 704.05(5), Stats., or a lien agreement with the tenant. The lien
25 agreement may not be created by a boilerplate "form provision" in
26 the rental agreement, but must be separately negotiated with the
27 tenant. This rule clarifies the method by which a lien
28 agreement, if any, must be negotiated:
29

- 30 • A lien agreement, if any, must be contained in a separate
31 written document entitled "NONSTANDARD RENTAL PROVISIONS" (see
32 above).
33
34 • The landlord must specifically identify and discuss the lien
35 agreement with the tenant, and must give the tenant a copy.
36
37 • The tenant must sign or initial the lien agreement.
38

1 Self-Help Eviction

2
3 Current law, under ch. 799, Stats., affords landlords a prompt
4 judicial procedure for evicting tenants whose tenancy is
5 terminated. This procedure was enacted, in part, to discourage
6 self-help evictions by landlords.

7
8 Current rules prohibit rental agreements which purport to
9 authorize self-help eviction. This rule prohibits self-help
10 eviction. Under this rule, a landlord may not exclude, forcibly
11 evict or constructively evict a tenant other than by an eviction
12 procedure specified under ch. 799, Stats.

13 _____

14
15 SECTION 1. ATCP 134.01(title), (intro.), and (1) to (6) are
16 amended to read:

17 ATCP 134.01(title) SCOPE AND APPLICATION. This chapter is
18 adopted under authority of s. 100.20, Stats., ~~and This chapter~~
19 ~~applies to the rental of dwelling units located in this state.~~
20 ~~It~~ but does not apply to the rental or occupancy of dwelling
21 ~~units~~ any of the following:

22 (1) ~~Operated by an institution, public or private, if A~~
23 dwelling unit operated by a public or private institution if
24 occupancy is incidental to detention or the provision of medical,
25 geriatric, educational, counseling, religious or similar
26 services.

1 (2) ~~Operated by a~~ A dwelling unit occupied by a member of a
2 fraternal or social organization for the benefit of its members
3 only, which operates that dwelling unit.

4 (3) ~~Under~~ A dwelling unit occupied, under a contract of
5 sale, if the occupant is by the purchaser of the dwelling unit or
6 a person who succeeds to the purchaser's successor in interest.

7 (4) ~~In~~ A dwelling unit, such as a dwelling unit in a hotel,
8 motel, or boarding house, lodging house or other similar premises
9 on a transient basis, that is being rented only by tourist or
10 transient occupants.

11 (5) ~~Furnished~~ A dwelling unit which the landlord provides
12 free of charge to any person, or free of charge to employees
13 conditioned upon employment in and about which the landlord
14 provides as consideration to a person whom the landlord currently
15 employs to operate or maintain the premises.

16 (6) ~~Under a rental agreement covering premises used by the~~
17 ~~occupant primarily for agricultural purposes,~~ A dwelling unit
18 occupied by a tenant who is engaged in commercial agricultural
19 operations on the premises.

1 SECTION 2. ATCP 134.02(3) is amended to read:

2 ATCP 134.02(3) "Earnest money deposit" means the total of
3 any payments or deposits, however denominated or described, given
4 by a prospective tenant to a landlord in return for the option of
5 entering into a rental agreement in the future, or for having a
6 rental agreement considered by a landlord. "Earnest money
7 deposit" does not include a fee which a landlord charges for a
8 credit check in compliance with s. ATCP 134.05(3).

9 SECTION 3. ATCP 134.02(4) is repealed.

10 SECTION 4. ATCP 134.02(10) is amended to read:

11 ATCP 134.02(10) "Rental agreement" means ~~any~~ an oral or
12 written agreement, whether written or oral, for the rental or
13 lease of a specific dwelling unit or premises, ~~and includes~~
14 ~~contracts or rules and regulations which are incidental to, or~~
15 ~~adopted pursuant to a rental agreement~~ in which the landlord and
16 tenant agree on essential terms of tenancy such as rent.
17 "Rental agreement" includes a lease. "Rental agreement" does not
18 include an agreement to enter into a rental agreement in the
19 future.

20

1 SECTION 5. ATCP 134.02(10) (note) is created to read:

2 NOTE: By approving an individual as a prospective tenant, a
3 landlord does not necessarily enter into a "rental
4 agreement" with that individual, or vice-versa. A
5 "rental agreement" (creating a tenancy interest in real
6 estate) arises only after the parties agree on the
7 essential terms of tenancy, including the specific
8 dwelling unit which the tenant will occupy and the
9 amount of rent which the tenant will pay for that
10 dwelling unit.

11
12 SECTION 6. ATCP 134.02(14) is created to read:

13 ATCP 134.02(14) "Tourist or transient occupants" means
14 tourists or other persons who occupy a dwelling unit for less
15 than sixty (60) days while traveling away from their permanent
16 place of residence.

17 SECTION 7. ATCP 134.03(title) is amended to read:

18 ATCP 134.03(title) RENTAL AGREEMENTS AND RECEIPTS.

19 SECTION 8. ATCP 134.03(2) (title) is amended to read:

20 ATCP 134.03(2) (title) RECEIPTS FOR TENANT PAYMENTS.

21 SECTION 9. ATCP 134.03(2) is renumbered ATCP 134.03(2) (a).

22 SECTION 10. ATCP 134.03(2) (b) is created to read:

23 ATCP 134.03(2) (b) If a tenant pays rent in cash, the
24 landlord upon receiving the cash payment shall ~~immediately~~
25 provide the tenant with a written receipt stating the nature and

1 amount of the payment. A landlord is not required to provide a
2 receipt for rent payments made by check.

3 SECTION 11. ATCP 134.04(1)(b) is amended to read:

4 (b) ~~The landlord and any successor of the A~~ landlord shall
5 keep tenants informed of ~~any changes, if any,~~ in the information
6 required under par. (a). The landlord shall mail or deliver
7 written notice of each change within 10 business days after the
8 change occurs.

9 SECTION 12. ATCP 134.04(2)(b)1. and 2. are amended to read:

10 ATCP 134.04(2)(b)1. The dwelling unit lacks hot ~~and~~ or cold
11 running water, ~~plumbing or sewage disposal facilities in good~~
12 ~~operating condition.~~

13 (b)2. Heating facilities serving the dwelling unit are not
14 in safe operating condition, or are not capable of maintaining a
15 temperature, in all living areas of the dwelling unit, of at
16 least 67° F(19° C) during all seasons of the year in which the
17 dwelling unit may be occupied. Temperatures in living areas
18 shall be measured at the approximate center of the room, midway
19 between floor and ceiling.

1 SECTION 13. ATCP 134.04(2)(b)5. and 6. are created to read:

2 ATCP 134.04(2)(b)5. The dwelling unit is not served by
3 plumbing facilities in good operating condition.

4 (b)6. The dwelling unit is not served by sewage disposal
5 facilities in good operating condition.

6 SECTION 14. ATCP 134.04(note) is created to read:

7 NOTE: A sample form which landlords may use to make the
8 disclosures required under s. ATCP 134.04 is contained
9 in the department publication, "Landlords and Tenants
10 -- The Wisconsin Way." You may obtain a copy of this
11 publication by calling the department's toll-free
12 Consumer Hotline, 1-800-422-7128, or by sending a
13 written request to:

14
15 Division of Trade and Consumer Protection
16 Department of Agriculture, Trade and Consumer
17 Protection
18 2811 Agriculture Drive
19 P.O. Box 8911
20 Madison, WI 53708-8911
21

22 SECTION 15. ATCP 134.05 is repealed and recreated to read:

23 ATCP 134.05 EARNEST MONEY DEPOSITS AND CREDIT CHECK FEES.

24 (1) ACCEPTING AN EARNEST MONEY DEPOSIT. A landlord may not
25 accept an earnest money deposit or security deposit from a rental
26 applicant until the landlord identifies to the applicant the

1 dwelling unit or units for which that applicant is being
2 considered for tenancy.

3 NOTE: A credit check fee authorized under sub. (4) is not
4 an "earnest money deposit" or a "security deposit."
5 See definition of "earnest money deposit" under s. ATCP
6 134.02(3).
7

8 (2) REFUNDING OR CREDITING AN EARNEST MONEY DEPOSIT. (a)

9 A landlord who receives an earnest money deposit from a rental
10 applicant shall send the full deposit to the applicant by first-
11 class mail, or shall deliver the full deposit to the applicant,
12 by the end of the next business day after any of the following
13 occurs:

14 1. The landlord rejects the rental application or refuses
15 to enter into a rental agreement with the applicant.

16 2. The applicant withdraws the rental application before
17 the landlord accepts that application.

18 3. The landlord fails to approve the rental application by
19 the end of the third business day after the landlord accepts the
20 applicant's earnest money deposit, or by a later date to which
21 the tenant agrees in writing. The later date may not be more
22 than 21 calendar days days after the landlord accepts the earnest
23 money deposit.

1 (b) A landlord who receives an earnest money deposit from a
2 rental applicant shall do one of the following if the landlord
3 enters into a rental agreement with that applicant:

4 1. Apply the earnest money deposit as rent or as a security
5 deposit.

6 2. Return the earnest money deposit to the tenant.

7 (c) A person giving an earnest money deposit to a landlord
8 does not waive his or her right to the full refund or credit owed
9 under par. (a) or (b) merely by accepting a partial payment or
10 credit of that amount.

11 (3) WITHHOLDING AN EARNEST MONEY DEPOSIT. (a) A landlord
12 may withhold from a properly accepted earnest money deposit if
13 the prospective tenant fails to enter into a rental agreement
14 after being approved for tenancy, unless the landlord has
15 significantly altered the rental terms previously disclosed to
16 the tenant.

17 (b) A landlord may withhold from an earnest money deposit,
18 under par. (a), an amount sufficient to compensate the landlord
19 for actual costs and damages incurred because of the prospective
20 tenant's failure to enter into a rental agreement. The landlord

1 may not withhold for lost rents unless the landlord has made a
2 reasonable effort to mitigate those losses, as provided under s.
3 704.29, Stats.

4 NOTE: See Pierce v. Norwick, 202 Wis. 2d 588 (1996),
5 regarding the award of damage claims for failure
6 to comply with provisions of this chapter related to
7 security deposits. The same method of computing a
8 tenant's damages may apply to violations related to
9 earnest money deposits.

10
11 (4) CREDIT CHECK FEE. (a) Except as provided under par.
12 (b), a landlord may require a a prospective tenant to pay the
13 landlord's actual cost, up to \$20, to obtain from an accredited
14 national credit reporting agency a credit report on the
15 prospective tenant. The landlord shall notify the prospective
16 tenant of the charge before requesting the credit report, and
17 shall provide the prospective tenant with a copy of the credit
18 report.

19 (b) A landlord may not require a prospective tenant to pay
20 for a credit report under par. (a) if, before the landlord
21 requests that credit report, the prospective tenant provides the
22 landlord with a credit report, from an accredited national credit
23 reporting agency, that is less than 30 days old.

1 NOTE: Paragraph (b) does not prohibit a landlord from
2 obtaining a more current credit check at the landlord's
3 expense.
4

5 SECTION 16. ATCP 134.06(1) to (3) are repealed and
6 recreated to read:

7 ATCP 134.06(1) CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES.

8 (a) Before a landlord accepts a security deposit, or converts an
9 earnest money deposit to a security deposit under s. ATCP
10 134.05(1)(b), the landlord shall notify the tenant in writing
11 that the tenant may do any of the following by a specified
12 deadline date which is not less than 7 days after the start of
13 tenancy:

14 1. Inspect the dwelling unit and notify the landlord of any
15 preexisting damages or defects.

16 2. Request a list of physical damages or defects, if any,
17 charged to the previous tenant's security deposit. The landlord
18 may require the tenant to make this request, if any, in writing.

19 (b) If a tenant makes a request under par. (a)2., the
20 landlord shall provide the tenant with a list of all physical
21 damages or defects charged to the previous tenant's security
22 deposit, regardless of whether those damages or defects have been

1 repaired. The landlord shall provide the list within 30 days
2 after the landlord receives the request, or within 7 days after
3 the landlord notifies the previous tenant of the security deposit
4 deductions, whichever occurs later. The landlord may explain
5 that some or all of the listed damages or defects have been
6 repaired, if that is the case. The landlord need not disclose
7 the previous tenant's identity, or the amounts withheld from the
8 previous tenant's security deposit.

9 (2) RETURNING SECURITY DEPOSITS. (a) Within 21 days after
10 a tenant surrenders the rental premises, the landlord shall
11 deliver or mail to the tenant the full amount of any security
12 deposit held by the landlord, less any amounts properly withheld
13 by the landlord under sub. (3).

14 NOTE: A rent payment in excess of one month's prepaid rent
15 is considered a "security deposit" as defined under
16 ATCP 134.02(11). This chapter does not prevent a
17 landlord from collecting more than one month's prepaid
18 rent. However, if the landlord holds any rent
19 prepayment in excess of one month's prepaid rent when
20 the tenant surrenders the premises, the landlord must
21 treat that excess as a "security deposit" under sub.
22 (2).

23
24 See Pierce v. Norwick, 202 Wis. 2d 588 (1996),
25 regarding the award of damage claims for failure
26 to comply with provisions of this chapter related
27 to security deposits and earnest money deposits.

1 (b) A tenant surrenders the premises under par. (a) on the
2 last day of tenancy provided under the rental agreement, except
3 that:

4 1. If the tenant vacates before the last day of tenancy
5 provided under the rental agreement, and gives the landlord
6 written notice that the tenant has vacated, surrender occurs when
7 the landlord receives the written notice that the tenant has
8 vacated. If the tenant mails the notice to the landlord, the
9 landlord is deemed to receive the notice on the second day after
10 mailing.

11 2. If the tenant vacates the premises after the last day of
12 tenancy provided under the rental agreement, surrender occurs
13 when the landlord learns that the tenant has vacated.

14 3. If the tenant is evicted, surrender occurs when a writ
15 of restitution is executed, or the landlord learns that the
16 tenant has vacated, whichever occurs first.

17 (c) If a tenant surrenders the premises without leaving a
18 forwarding address, the landlord may mail the security deposit to
19 the tenant's last known address.

1 (d) If a landlord returns a security deposit in the form of
2 a check, draft or money order, the landlord shall make the check,
3 draft or money order payable to all tenants who are parties to
4 the rental agreement, unless the tenants designate a payee in
5 writing.

6 (e) A tenant does not waive his or her right to the full
7 amount owed under par. (a) merely by accepting a partial payment
8 of that amount.

9 (3) SECURITY DEPOSIT WITHHOLDING; RESTRICTIONS. (a) A
10 landlord may withhold from a tenant's security deposit only for
11 the following:

- 12 1. Tenant damage, waste or neglect of the premises.
- 13 2. Unpaid rent for which the tenant is legally responsible,
14 subject to s. 704.29, Stats.
- 15 3. Payment which the tenant owes under the rental agreement
16 for utility service provided by the landlord but not included in
17 the rent.
- 18 4. Payment which the tenant owes for direct utility service
19 provided by a government-owned utility, to the extent that the
20 landlord becomes liable for the tenant's nonpayment.

1 5. Unpaid mobile home parking fees which a local unit of
2 government has assessed against the tenant under s. 66.058 (3),
3 Stats., to the extent that the landlord becomes liable for the
4 tenant's nonpayment.

5 6. Other reasons authorized in the rental agreement
6 according to par. (b).

7 (b) A rental agreement may include one or more nonstandard
8 rental provisions which authorize a landlord to withhold from a
9 tenant's security deposit for reasons not identified under par.

10 (a). The landlord shall include the nonstandard provisions, if
11 any, in a separate written document entitled "**NONSTANDARD RENTAL**
12 **PROVISIONS**" which the landlord provides to the tenant. The
13 landlord shall specifically identify and discuss each nonstandard
14 provision with the tenant before the tenant enters into any
15 rental agreement with the landlord. If the tenant signs or
16 initials a nonstandard rental provision, it is rebuttably
17 presumed that the landlord has specifically identified and
18 discussed that nonstandard provision with the tenant, and that
19 the tenant has agreed to it.

20 NOTE: The separate written document under par. (b) may be
21 pre-printed.
22

1 (c) This subsection does not authorize a landlord to
2 withhold a security deposit for normal wear and tear, or for
3 other damages or losses for which the tenant cannot reasonably be
4 held responsible under applicable law.

5 NOTE: For example, a landlord may not withhold from a
6 tenant's security deposit for routine painting or
7 carpet cleaning, where there is no unusual damage
8 caused by tenant abuse.
9

10
11 SECTION 18. ATCP 134.08(7) is amended to read:

12 ATCP 134.08(7) ~~Provide, by means of a form provision, for~~
13 ~~the waiver of~~ Waive any statutory or other legal obligation on
14 the part of the landlord to deliver the premises in a fit or
15 habitable condition, or maintain the premises during tenancy.

16 SECTION 19. ATCP 134.09(2) and (4) are repealed and
17 recreated to read:

18 ATCP 134.09(2) UNAUTHORIZED ENTRY. (a) Except as provided
19 under par. (b) or (c), no landlord may do any of the following:

20 1. Enter a dwelling unit during tenancy except to inspect
21 the premises, make repairs, or show the premises to prospective
22 tenants or purchasers, as authorized under s. 704.05(2), Stats.
23 A landlord may enter for the amount of time reasonably required

1 to inspect the premises, make repairs, or show the premises to
2 prospective tenants or purchasers.

3 2. Enter a dwelling unit during tenancy except upon advance
4 notice and at reasonable times. Advance notice means at least 12
5 hours advance notice unless the tenant, upon being notified of
6 the proposed entry, consents to a shorter time period.

7 (b) Paragraph (a) does not apply to an entry if any of the
8 following applies:

9 1. The tenant, knowing the proposed time of entry, requests
10 or consents in advance to the entry.

11 2. A health or safety emergency exists.

12 3. The tenant is absent and the landlord reasonably
13 believes that entry is necessary to protect the premises from
14 damage.

15 (c) A rental agreement may include a nonstandard rental
16 provision authorizing a landlord to enter a tenant's dwelling
17 unit at reasonable times, under circumstances not authorized
18 under par. (a) or (b). The landlord shall include the
19 nonstandard provision, if any, in a separate written document
20 entitled "NONSTANDARD RENTAL PROVISIONS" which the landlord

1 provides to the tenant. The landlord shall specifically identify
2 and discuss the nonstandard provision with the tenant before the
3 tenant enters into any rental agreement with the landlord. If
4 the tenant signs or initials the nonstandard rental provision, it
5 is rebuttably presumed that the landlord has specifically
6 identified and discussed that nonstandard provision with the
7 tenant, and that the tenant has agreed to it.

8 NOTE: The separate written document under par. (b) may be
9 pre-printed.
10

11 (d) No landlord may enter a dwelling unit during tenancy
12 without first announcing his or her presence to persons who may
13 be present in the dwelling unit, and identifying himself or
14 herself upon request.

15 NOTE: For example, a landlord may announce his or her
16 presence by knocking or ringing the doorbell. If
17 anyone is present in the dwelling unit, the
18 landlord must then identify himself or herself upon
19 request.

20 (4) CONFISCATING PERSONAL PROPERTY. (a) No landlord may
21 seize or hold a tenant's personal property, or prevent the tenant
22 from taking possession of the tenant's personal property, except
23

1 as authorized under s. 704.05(5), Stats., or a written lien
2 agreement between the landlord and tenant.

3 (b) A lien agreement under par. (a), if any, shall be
4 executed in writing at the time of the initial rental agreement.
5 The landlord shall include the lien agreement in a separate
6 written document entitled "NONSTANDARD RENTAL PROVISIONS" which
7 the landlord provides to the tenant. The landlord shall
8 specifically identify and discuss the lien agreement with the
9 tenant before the tenant enters into any rental agreement with
10 the landlord. The lien agreement is not effective unless signed
11 or initialed by the tenant.

12 **SECTION 20.** ATCP 134.09(4) (note) is created to read:

13 NOTE: See s. 704.11, Stats.

14 **SECTION 21.** ATCP 134.09(7) to (9) are created to read:

15 ATCP 134.09(7) SELF-HELP EVICTION. No landlord may
16 exclude, forcibly evict or constructively evict a tenant from a
17 dwelling unit, other than by an eviction procedure specified
18 under ch. 799, Stats.

1 (8) LATE RENT FEES AND PENALTIES. (a) No landlord may
2 charge a late rent fee or late rent penalty to a tenant, except
3 as specifically provided under the rental agreement.

4 (b) Before charging a late rent fee or late rent penalty to
5 a tenant, a landlord shall apply all rent prepayments received
6 from that tenant to offset the amount of rent owed by the tenant.

7 (b) No landlord may charge any tenant a fee or penalty for
8 nonpayment of a late rent fee or late rent penalty.

9 (9) MISREPRESENTATIONS. (a) No landlord may do any of the
10 following for the purpose of inducing any person to enter into a
11 rental agreement:

12 1. Misrepresent the location, characteristics or
13 equivalency of dwelling units owned or offered by the landlord.

14 2. Misrepresent the amount of rent or non-rent charges to
15 be paid by the tenant.

16 3. Fail to disclose, in connection with any representation
17 of rent amount, the existence of any non-rent charges which will
18 increase the total amount payable by the tenant during tenancy.

19 (b) No landlord may misrepresent to any person, as part of
20 a plan or scheme to rent a dwelling unit to that person, that the

1 person is being considered as a prospective tenant for a
2 different dwelling unit.

3 NOTE: Paragraph (b) prohibits "bait and switch" rental
4 practices by landlords. See also s. 100.18(9), Stats.
5

6 **EFFECTIVE DATE.** The rules contained in this order shall
7 take effect on January 1, 1999.

8 **INITIAL APPLICABILITY.** The rules contained in this order
9 apply to rental agreements entered into, renewed or extended
10 after January 1, 1999, and to continuing periodic tenancies
11 beginning with the first rent-paying period beginning after
12 January 1, 1999.
13
14

15 Dated this _____ day of _____, 1998.

16 STATE OF WISCONSIN
17 DEPARTMENT OF AGRICULTURE,
18 TRADE AND CONSUMER PROTECTION
19
20

21 By _____
22 Ben Brancel
23 Secretary

SUMMARY OF PUBLIC HEARING TESTIMONY
PROPOSED REVISIONS TO CH. ATCP 134

1. A total of 21 people testified at the public hearing in Milwaukee on January 21, 1998. Two persons spoke twice during the hearing. The order of their appearances at the hearing is as follows:

Jerald A. Peterson	Affiliation not identified	Opposed changes
Don L. Johnson	Apt Owners / Mgrs. of Wis	Supports changes
Robert A. Smith	Atty. - Property Owner	Opposes changes
Sandy Roemer	Realtor	Opposes changes
Louis Mestre	Atty. - Legal Action of Wis	Supports changes
David Ohrmundt	Affiliation not identified	Made various comments
Alan Rusk	Affiliation not identified	Opposes changes
Karl Mayer	Affiliation not identified	Opposes changes
Eric Jernberg	Community Advocates	Supports changes
Jim Campbell	Wis. Apt. Owners Assn.	Supports changes
Suzanne M. Possel	Represents Property Owner	Supports changes
Kim Queen	Apt Owners Assn. of SE Wis	Opposes changes
Orville Seymer	Apt Owners Assn. of SE Wis	Opposes changes
Bernard Cohen	Affiliation not identified	Made various comments
Karen Long	Milw. Building Insp. Dept.	Supports changes
Tim G. Karth	Apt Owners Assn. of SE Wis	Opposes changes
Robert Clark	Property Owner	Made various comments
Geri Stank	Affiliation not identified	Made various comments
Robert Wortock	Apt Owners Assn. of SE Wis	Opposes changes
Roger Stank	Affiliation not identified	Supports changes
Tom Adams	Affiliation not identified	Neither for/against

In addition to those speaking, the following persons registered or submitted written comments at the Milwaukee public hearing:

Richard Zoeller	Affiliation not identified	Opposed changes
Scott Franken	Affiliation not identified	Opposed changes
Walter Harsh	Affiliation not identified	Opposed changes
John Chitko	Affiliation not identified	Opposed changes
Anton Cizel	Affiliation not identified	Opposed changes
James Beranek	MPI Property Mgmt.	Opposed changes
Carl Bayerl	Affiliation not identified	Opposed changes
George Kopacz	Affiliation not identified	Opposed changes
Paul Kinsley	Affiliation not identified	Supports changes
Beverly Heinell	Affiliation not identified	Supports changes
Jerry Zeurer	Affiliation not identified	Supports changes

Leonard Sobczak	Affiliation not identified	Supports changes
Chuck Albee	Racine Landlord Assn.	Supports changes
Philip Agger	St. Clair Managment	Supports changes
Tarvus L. Hawthorne	Harambee Ombudsman Project	Neither for/against
Kim Terry	Affiliation not identified	Neither for/against
Troy Davis	Affiliation not identified	Made various comments
Richard Berger	Apt Owners Assn. of SE Wis	Neither for/against
Mark Rohde	Affiliation not identified	No preference selected
Nicole Romine	Affiliation not identified	Neither for/against
Steven Kreiser	Rep. Glenn Grothman	No preference selected
Dan Feisthammer	Affiliation not identified	No preference selected
Donna Treder	Affiliation not identified	No preference selected
N.L. Adams	Affiliation not identified	Neither for/against
Robert Jovanovich	Affiliation not identified	Neither for/against
Sandra A. Roelier	Affiliation not identified	Neither for/against
Marion Young	Affiliation not identified	No preference selected

2. A total of 17 persons testified at the public hearing held in Green Bay on January 23, 1998. They were (in order of appearance at the hearing):

John Gilman	City of Green Bay	Supported & Opposed
Dave Kozlowski	Fox Valley Apt Assn.	Supported changes
Ed Koelper	Property Owner	Supported with concerns
Marjorie Wessely	Property Owner	Supported changes
Keith DuQuaine	Pres. Brown Cty Multi-Family Assn.	Neither for/against
Ronald Scheid	Fox Valley Apt Assn.	Supported changes
Mike Mokler	Wis Apt Assn.	Supported changes
Louis Mestre	Atty. - Legal Action of Wis	Supported changes
Henry Dreschler	Fox Valley Apt Assn. - Director	Supported changes
Richard Drewa	Affiliation not identified	Supported changes
Kathleen Allen	Property Owner	Supported changes
Janet Gollnick	Apt Assn. of NE Wis	Supported changes
Sharon Hallada	Apt Assn. of NE Wis	Supported changes
Paul Murray	Apt Assn. of NE Wis - Director	Supported changes
Bette Tippet	Fox Valley Apt Assn.	Supported changes
Orville Seymer	Apt Assn. of SE Wis	Opposes changes
Cyril Mennan	Apt Assn. of NE Wis	Made various comments

The following persons registered or submitted written comments at the public hearing in Green Bay:

Mary Strebel	Affiliation not identified	Supported changes
Carl Bayerl	Affiliation not identified	Supported changes
Mildred Van Horn	Affiliation not identified	Supported changes
Frena Scheid	Fox Valley Apt Assn.	Supported changes

Daniel Scheibe	Fox Valley Apt Assn.	Supported changes
Darlene Scheibe	Fox Valley Apt Assn.	Supported changes
Joyce Loch	Apt Assn. of NE Wis	Supported changes
Russell Strebel, Sr.	Affiliation not identified	Supported changes
Jeff Landin	Brown Cty Multi-Family Assn.	Supported changes
Mike Meetz	Fox Valley Apt Assn.	Supported changes
Marilyn Schwenker	Thos. Wright Inv.	Neither for/against
Larry Wiest	City of Green Bay	Neither for/against
DeAnn Karstedt	D&B Investments	Neither for/against
Lisa Borick	City of Green Bay	Neither for/against
Leo Yelle	Apt Assn. of NE Wis	Neither for/against
Gary Wisneski	Affiliation not identified	Wanted more info
Ronald Engels	Affiliation not identified	Made various comments
Dennis Klarowski	Affiliation not identified	No comment
Alice M. Nicklas	Affiliation not identified	No comment

3. A public hearing was held in Wausau on January 28, 1998. Five persons testified at the hearing. They were (in order of appearance at the hearing):

Harold Streekstra	Pres. - Wis Rapids Rental Owners	Supported Changes
Charles Virnig	Property Owner	Supported Changes
Dave Cameron	Affiliation not identified	Made various comments
Ralph Lang	Marshfield Property Owners	Supported changes
Vernon Martin	Marshfield Property Owners	Neither for/against

Also, the following persons registered or submitted written comments at the Wausau hearing:

Jan Koeppel	Property Owner	Supported changes
Ted Rosenfeldt	Affiliation not identified	Supported changes
Robert R. Bredeck	Affiliation not identified	Neither for/against
James G. Fescher	Affiliation not identified	Neither for/against

4. The Eau Claire public hearing on 1/29/98 featured 6 persons who testified on the proposed rules. They were (in order of appearance at the hearing):

John Wilcox	Attorney	Supports changes
Dale Goshaw	Chippewa Valley Apt Assn.	Made various comments
Pat Kaufman	Affiliation not identified	Made various comments
John Curtis	Chippewa Valley Apt Assn.	Supports changes
James E. Peterson	St. Croix Valley Apt Assn.	Neither for/against
Mary Ann Albertson	Property Owner	Made various comments

There were no other registrations or written comments submitted at the Eau Claire public hearing.

5. A public hearing was held in Madison on January 30, 1998. Seven persons testified. They were (in order of appearance at the hearing):

William Donoghue	Madison Apt Assn.	Supports changes
Jim Campbell	Leg. Co-chair, Wis Apt Assn.	Supports changes
E. Joe Murray	Wis. Realtors Assn.	Supports changes
Fred Prassas	Wis. Realtors Assn.	Supports changes
Debra Conrad	Atty. - Wis. Realtors Assn.	Supports changes
Orville Seymer	Apt Owners Assn. of SE Wis	Opposes changes
Art Luetke	Wis Apt Assn. & Wis Realtors Assn.	Supports changes

In addition to those speaking, the following persons registered or submitted written comments at the hearing in Madison:

Carl Bayerl	Affiliation not identified	Supports changes
Becky Anderson	Affiliation not identified	Supports changes
Earl Mihlbauer	Affiliation not identified	Supports changes
Cheryl Gain	Wis Dept. of Commerce	No preference selected

SUMMARY OF WRITTEN SUBMITTALS

The hearing record on proposed changes to ch. ATCP 134, Wis. Adm. Code, remained open until February 13, 1998. The following persons submitted written comments or positions as part of the hearing record:

Allan Brown	Affiliation not identified	Supports changes
Marilyn Feil	Affiliation not identified	Supports changes
Orville Seymer	Apt Owners Assn. of SE Wis	Made various comments
Lyle Krueger	Affiliation not identified	Made various comments
S. Minor	Affiliation not identified	Made various comments
J. Minor	Affiliation not identified	Made various comments
Karen Konz	Affiliation not identified	Made various comments
Robert J. Andersen	Atty - Legal Action of Wis	Made various comments
Kevin Reed	Affiliation not identified	Opposes changes
Ray LeTourneau	Property Owner	Made various comments
Tori Rapkin	Property Owner	Made various comments
Bonnie Stuempfig	Property manager	Made various comments
Dagoberto Ibarra	Property Owner	Made various comments
Kenneth Hassler	Property Owner	Made various comments
Ronald Scheid	Fox Valley Apt Assn.	Supports changes
Mary Strebel	Property Owner	Made various comments
Matthew J. Richburg	Atty - Madison Propert Mgmt, Inc.	Made various comments
Louis J. Mestre	Atty - Legal Action of Wis.	Supports changes
Gerard J. Deschane	Dir. Gov. Affairs, Wis Builders	Supports changes

Philip Agger	Affiliation not identified	Made various comments
James A. Campbell	Wis. Apt. Assn.	Made various comments
Martin G. Collins	Milw. Building Insp. Dept.	Supports changes
Gabrielle Stupek	Affiliation not identified	Made various comments
Larry (no last name)	Affiliation not identified	Made various comments
M. Beck	Affiliation not identified	Made various comments
Jerald A. Peterson	Affiliation not identified	Opposed changes
Keith E. DuQuaine	Pres. Brown Cty Multi-Family Assn.	Made various comments
Dawn Bucholz	Affiliation not identified	Supports changes
James F. Kraemer	Property Owner	Made various comments
Charles G. Powell	Kenosha Apt. Assn.	Made various comments
Edward Manske	Fox Valley Apt. Assn.	Supports changes
Danna Klopper	Fox Valley Apt. Assn.	Supports changes
Gordon Williamson	Fox Valley Apt. Assn.	Supports changes
Lafae Blum	Fox Valley Apt. Assn.	Supports changes
Raymond C. West	Fox Valley Apt. Assn.	Supports changes
Dennis Vanderlog	Fox Valley Apt. Assn.	Supports changes
Nancy M. West	Fox Valley Apt. Assn.	Supports changes
Thomas L. Milewski	Fox Valley Apt. Assn.	Supports changes
Shelby J. Milewski	Fox Valley Apt. Assn.	Supports changes
Mary Drew	Fox Valley Apt. Assn.	Supports changes
Betty J. Allen	Fox Valley Apt. Assn.	Supports changes
Robert G. Allen	Fox Valley Apt. Assn.	Supports changes
Jill D. Woodke	Fox Valley Apt. Assn.	Supports changes
Dennis Klapper	Fox Valley Apt. Assn.	Supports changes
Tammy Estrada	Fox Valley Apt. Assn.	Supports changes
Rommo Estrada	Fox Valley Apt. Assn.	Supports changes
George Cutts	Fox Valley Apt. Assn.	Supports changes
Chris Todenhaven	Fox Valley Apt. Assn.	Supports changes
Diane Verrier	Fox Valley Apt. Assn.	Supports changes
Doug Verrier	Fox Valley Apt. Assn.	Supports changes
Troy Datts	Fox Valley Apt. Assn.	Supports changes
Eric Eyeher	Fox Valley Apt. Assn.	Supports changes
Tim Audere	Fox Valley Apt. Assn.	Supports changes
Floyd F. Baer	Fox Valley Apt. Assn.	Supports changes
Nancy Nesplan	Fox Valley Apt. Assn.	Supports changes
Aldin Johann	Fox Valley Apt. Assn.	Supports changes
N. Seva, Jr.	Fox Valley Apt. Assn.	Supports changes
Carol Johann	Fox Valley Apt. Assn.	Supports changes
Jolene Diley	Fox Valley Apt. Assn.	Supports changes
Larry Mercier	Fox Valley Apt. Assn.	Supports changes
Shirley Mercier	Fox Valley Apt. Assn.	Supports changes
Peter Truttman	Fox Valley Apt. Assn.	Supports changes
Mike Argill	Fox Valley Apt. Assn.	Supports changes
Ronald Diley	Fox Valley Apt. Assn.	Supports changes

Kathleen R. Allen	Fox Valley Apt. Assn.	Supports changes
Jaret Niles	Fox Valley Apt. Assn.	Supports changes
Daniel M. Schaike	Fox Valley Apt. Assn.	Supports changes
Marianne Bolssen	Fox Valley Apt. Assn.	Supports changes
Richard J. Dunlap	Fox Valley Apt. Assn.	Supports changes
Leroy W. Thiel	Fox Valley Apt. Assn.	Supports changes
Mike Sanford	Fox Valley Apt. Assn.	Supports changes
Richard C. Drewa	Fox Valley Apt. Assn.	Supports changes
Jack Ziegler	Fox Valley Apt. Assn.	Supports changes
Marilyn F. Barile	Fox Valley Apt. Assn.	Supports changes
Richard Boren	Fox Valley Apt. Assn.	Supports changes
Lois Greendman	Fox Valley Apt. Assn.	Supports changes
Lion Greendman	Fox Valley Apt. Assn.	Supports changes
Dane Kozlowski	Fox Valley Apt. Assn.	Supports changes
John Peterson	Fox Valley Apt. Assn.	Supports changes
Brian Woodke	Fox Valley Apt. Assn.	Supports changes
Mike Schultz	Fox Valley Apt. Assn.	Supports changes
Dave Newhouse	Fox Valley Apt. Assn.	Supports changes
Henry J. Drechsler	Fox Valley Apt. Assn.	Supports changes
Daniel L. Farrell	Fox Valley Apt. Assn.	Supports changes
Robert L. Chu	Fox Valley Apt. Assn.	Supports changes
Verne Thiel	Fox Valley Apt. Assn.	Supports changes
Mary Schultz	Fox Valley Apt. Assn.	Supports changes
Robert Millay	Fox Valley Apt. Assn.	Supports changes
Richard Kinison	Fox Valley Apt. Assn.	Supports changes
David Earl Towne	Fox Valley Apt. Assn.	Supports changes
Mike Neft	Fox Valley Apt. Assn.	Supports changes
Steven A. Torlebare	Fox Valley Apt. Assn.	Supports changes

1998 Session

FISCAL ESTIMATE DOA-2048 (R 10/94) <input type="checkbox"/> ORIGINAL <input checked="" type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No. / Adm. Rule No. ATCP 134 <hr/> Amendment No. (If Applicable)
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Subject
Residential Rental Practices

Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local: <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Source Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

This rule modifies current ch. ATCP 134, Wis. Adm. Code, to update and clarify various residential rental practice requirements for landlords and tenants. The rule supplements ch. 704, Stats., and regulates certain unfair trade practices within the residential rental industry.

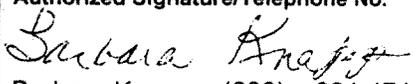
The Department has administered and enforced ch. ATCP 134 since 1980. Thousands of new rental transactions occur each year, and landlord-tenant disputes have consistently been a major source of consumer complaints. The Department receives and handles approximately 1200 residential rental practice complaints each year. Landlord-tenant disputes are also resolved through small claims court actions between the parties.

The Department projects little if any change in the number of landlord-tenant complaints received by staff. However, a decrease in small claims litigation is anticipated as a result of the rule revisions. The Department assumes that the rule revisions will assist both residential rental property owners and tenants in efforts to mediate disputes by clarifying their respective rights and responsibilities under law.

There may be some initial workload increases for Department staff associated with reprinting and distribution of educational outreach materials, as well as other outreach efforts initiated by the Department prior to the delayed effective date of the rule. These costs are projected to be minimal and already factored into the annual operating costs of the Department.

Long - Range Fiscal Implications

None

Agency/prepared by: (Name & Phone No.) DATCP Tom Stoebig 224-4944	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 6/30/98
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FINAL REGULATORY FLEXIBILITY ANALYSIS

Proposed Ch. ATCP 134, Wis. Adm. Code
(Residential Rental Practices)

The department's proposed rules will have an impact on most landlords who lease residential dwelling units. Many of these landlords are small businesses as defined by s. 227.114(a), Stats.

The current rules regulate residential rental practices by landlords under ch. ATCP 134, Wis. Adm. Code. This rule, which was developed in consultation with an ad hoc advisory committee that included landlord and tenant representatives clarifies and simplifies the rules. This rule will assist landlords in complying with ch. ATCP 134, and should effect a decrease in legal conflicts between landlords and tenants. Among other things, this rule:

- Clarifies the coverage of current rules.
- Clarifies the definition of "rental agreement." A rental agreement (conveying a tenancy interest in real estate) does not arise until the parties agree on the essential terms of tenancy, including the specific dwelling unit and the amount of rent to be paid for that dwelling unit.
- Allows landlords and tenants to agree that they will enter into a rental agreement in the future, assuming the satisfactory negotiation of specific terms and conditions, before a specific dwelling unit is identified, but prohibits deceptive "bait and switch" tactics by landlords.
- Clarifies current rules related to the return and withholding of "earnest money" deposits paid by prospective tenants.
- Modifies current rules related to the documentation of pre-existing damages.
- Clarifies current requirements related to the disclosure of conditions affecting the habitability of the dwelling unit.
- Clarifies current procedures for negotiating nonstandard rental provisions which do any of the following:
 - Requires landlords to provide tenants receipts for cash rent payments.
 - Prohibits rental provisions which purport to waive the landlord's legal obligation to provided fit and habitable premises.
- Clarifies current rules related to a landlord's entry into a tenant's dwelling unit.

- Regulates, but does not prohibit, penalties for late rent payment.
- Clarifies the deadline by which a landlord must return or account for a tenant's security deposit.
- Clarifies procedures for returning security deposits and earnest money.
- Prohibits forcible "self-help" or constructive evictions.

As a result of input received during the public hearing and comment period, the division modified the draft rule to accommodate the needs of small business owners / landlords in the following areas:

- The draft rule was modified to allow landlords to charge the actual cost of, but not more than \$20, for the purpose of obtaining a credit report on a prospective tenant from a national credit reporting agency or its affiliates, subject to some limitations. This change is intended to reduce costs associated with screening tenants who falsify applications.
- The draft rule was modified to allow up to 21 calendar days for landlords to complete application processing before requiring return of earnest money deposits. The purpose of this change is to reduce the costs of processing rental applications and provide small business owners with the requisite time to adequately screen tenants.
- The draft rule was modified to allow multiple non-standard rental provisions to be contained within a single document and to allow the document to be pre-printed. This change is intended to reduce paperwork and printing costs.
- The draft rule was modified to allow tenants to designate, in writing, the specific parties to whom the security deposit shall be paid. The purpose of this change is to reduce confusion regarding which party in a rental agreement is due the return of a security deposit, and reduce liability to business owners.

The revisions do not create additional financial burdens and therefore will have no adverse impact on small business.

Dated this _____ day of July, 1998

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE
TRADE AND CONSUMER PROTECTION

By: _____
William L. Oemichen, Administrator
Division of Trade and Consumer Protection